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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/741,327	12/19/2003	Tadahiko Ikeya	YAMA:062	6905

7590  
04/09/2007  
Marc A. Rossi  
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EXAMINER
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WARREN, DAVID S

ART UNIT	PAPER NUMBER
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2837

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/741,327		IKEYA, TADAHIKO	
	<b>Examiner</b>		<b>Art Unit</b>	
	David S. Warren		2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6,9-14 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-14 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/5/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 3, 9 – 11, 10, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata (5,824,932; hereinafter “Nakata”) in view of Nakata (5,696,343; hereinafter referred to as Nakata ‘343 to distinguish between references having the same name). Regarding claims 1 and 9, Nakata discloses the use of storing song and style data with associated tempo and meter data (for song and style storage, see col. 8, lines 46 – 48; for song tempo and meter, see col. 4, lines 26 – 30; for style tempo and meter, see col. 3, lines 63 – 65 and the sentence bridging cols. 4 and 5), accompaniment data (col. 8, lines 41 – 45), and the need to compare and match the song data with the style data (see the second and the last sentence of the Abstract). Nakata does not disclose searching the style storage for style tempo (or meter) to match song tempo (or meter). Nakata ‘343 discloses searching for a style pattern (i.e., tempo or meter) to match a the style of the song (see the paragraph bridging cols. 10 and 11). It would have been obvious to one of ordinary skill in the art to combine the teachings of Nakata and Nakata ‘343 to obtain a system to match song and style data

by searching for corresponding tempo or meter data. The motivation for making this combination is that matching a song with a style of different tempo (or meter) would not sound pleasing. The motivation for adding the searching feature, would be to allow a user of the Nakata device to choose a song and automatically select a style, thus creating an “automatic performance” (as suggested by Nakata). Regarding claims 2 and 10 Nakata discloses that the song data includes both a melody and chords (col. 8, second paragraph). Regarding claims 3, 11, 17 and 18, Nakata '343 discloses manually selecting tone color data (tone color is synonymous with timbre) – see col. 4, lines 64 – 65. It would have been obvious to one of ordinary skill in the art to combine the teachings of Nakata and Nakata '343 to obtain a style search and selection means having manual tone color performance selection. The motivation for making this combination is that a typical user would want to use appropriate instruments (i.e., each instrument has an associated tone color) for a desired style, e.g., selecting an acoustic guitar for the bluegrass style.

6. Claims 4 – 6, 12 – 14, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakata '343 in view of Ito (6,175,071). Regarding independent claims 4 and 12 Nakata '343 discloses song storage portion (col. 5, lines 23 – 25), style storage (col. 5, 52 – 55), style setting portion (via “style designation event”; col. 5, lines 38 – 40), and a reproduction portion (see steps n11 and n13). Nakata '343 does not disclose the use of a warning portion for warning a user when the style setting data set by the user’s operation does not match the song data in the song storage portion. Ito

discloses the use of warning a user when data is not available (step S7; col. 5, 52 – 55). (The Examiner acknowledges that the “keyword” of Ito is different than the style data of the Applicant.) However, it is still deemed that one of ordinary skill would think to combine the references since both the Applicant and Ito are concerned with missing data. The motivation for making this combination would be to prevent a user from a potentially embarrassing situation wherein data, lacking in a database, was inadvertently selected and could not be performed. Thus, a user would be allowed to make a second correct selection. ~~X~~ Regarding claims 5 and 13, Nakata ‘343 shows the use of song data having melody and chords (col. 5, lines 5 – 9). Regarding claims 6 and 14, see fig. 4, where style “designating” is synonymous with style “setting.” Regarding claims 19 and 20, Nakata ‘343 discloses matching meter and modifying the meter to match the song data (see paragraph bridging cols. 10 and 11). The Examiner maintains that providing a modified meter is functionally equivalent to substituting a meter since both situations will produce an appropriate meter for a given song.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1 – 6, 9 – 14, and 17 - 20 have been considered but are moot in view of the new ground(s) of rejection.


***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David S. Warren whose telephone number is 571-272-2076. The examiner can normally be reached on M-F, 9:30 A.M. to 6:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-2837. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

dsw



DAVID S. WARREN